

INTERMUNICIPAL AGREEMENT

For

CONSERVATION AGENT SERVICES BETWEEN THE TOWNS OF NORTHBRIDGE & UPTON

THIS INTERMUNICIPAL AGREEMENT ("Agreement") is made and entered into as of this 1st day of _____ 2016 by and between TOWN OF NORTHBRIDGE ("Northbridge"), a municipal corporation organized under the laws of the Commonwealth of Massachusetts with a principal address of 7 Main St. Whitinsville, MA 01588, acting by and through its Board of Selectmen, and the TOWN OF UPTON ("Upton"), a municipal corporation organized under the laws of the Commonwealth of Massachusetts with a principal address of 1 Main Street, Box 1, Upton, MA 01568, acting by and through its Board of Selectmen with no personal liability to the aforementioned public officials (both Towns collectively referred to as "Towns" or "parties").

WHEREAS, Chapter 40, Section 4A of the General Laws, as amended, allows the chief executive officer of towns to enter into agreements with one or more other towns to perform jointly activities or undertakings which any one of them is authorized by law to perform; and,

WHEREAS, Northbridge does not currently have a Conservation Agent; and

WHEREAS, the parties have agreed to establish a mechanism for compensating Upton for such conservation services; and

WHEREAS, the parties have agreed to establish a mechanism for addressing operational issues concerning the provision of such conservation services; and

WHEREAS, each Town agrees to absolve the other Town from liability exclusively caused by one of its employees, as specified in this Agreement.

NOW, THEREFORE, for good and valuable consideration, and the mutual promises and benefits set forth below, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. TERM

This Agreement shall take effect on the first day of _____, 2016. This agreement shall continue in effect for _____ (__) years. Either party may terminate the Agreement by providing at least six (6) months' notice prior to the start of a new fiscal year that it does not intend to participate in this Agreement for the next following fiscal year ("Notice of Termination").

2. OBLIGATIONS OF UPTON

A. Wetlands Protection Act

1. Conduct site visits to determine applicability and compliance with the Act.
2. Report violations of the Act and issue enforcement orders

3. Provide information and explanation regarding laws governing the act to all parties.
- B. Provide Support to the Conservation Commission
 1. Attend Commission meetings
 2. Compile information, prepare reports and other information required by the Commission
 3. Perform assigned administrative duties including assistance with preparation of the annual budget
 4. Perform similar work as directed by the Conservation Commission

3. **OBLIGATIONS OF NORTHBRIDGE**

- A. Northbridge will make available a representative for the purpose of consultation and/or home visitation should environmental conditions warrant such action.
- B. Northbridge agrees to provide office space, a computer or other necessary technology, and appropriate funds for the reimbursement to the Conservation Agent for mileage costs incurred with operating the Agent's personal automobile in the course of his/her duties.

4. **PERSONNEL**

Effective _____, 2016 the Conservation Agent shall be available to the Town of Northbridge for up to eight (8) hours on average per week during the term of this agreement. The schedule shall be set by mutual agreement of the Conservation Commissions. Said schedule may be modified by agreement of the -Conservation Commissions. The Conservation Agent shall be available to attend Conservation Commission meetings at the Commission's request.

While engaged in performing services in the Town of Northbridge under this Agreement, the Upton Conservation Agent shall be deemed to be engaged in the service and employment of the Town of Upton, notwithstanding that such service activity or undertaking is being performed in or for the Town of Northbridge.

5. **COMPENSATION**

A. Fee

Northbridge shall compensate Upton by paying a fee of \$_____ per hour for services rendered and invoiced to Northbridge hereunder, which covers the salary and benefits of the Conservation Agent. The rate for Fiscal Year 2016/17 shall be reviewed, negotiated, and established by the Town Managers by April 1, 2016. Northbridge

shall not be responsible for any additional fees, costs, charges or expenses relating to said Conservation Agent with the exception of mileage reimbursement.

B. Invoice

Upton shall bill Northbridge in equal quarterly installments, on September 1, December 1, March 1 and June 1 of each year.

C. Payment

Northbridge hereby agrees to submit payment in full for each such bill to Upton within thirty (30) days of receipt of said bill. Notwithstanding the above, any dispute concerning billing shall be first presented in writing by the disputing party within said thirty (30) days, and thereafter shall be resolved in accordance with the "Dispute Resolution" paragraph of this Agreement.

6. TERMINATION

In accordance with Section 1, either party may terminate this Agreement by providing written notice to the other party at least six months prior to the start of a new fiscal year, effective as of June 30 of the next following year.

7. DISPUTE RESOLUTION

No suit upon any claim or cause of action upon, or for damages upon, by reason of, or growing out of, this Agreement or its non-performance or faulty performance, shall be filed or maintainable by any party unless notice of such claim or cause of action be given to the other party at its address, above given, not less than thirty (30) days prior to filing, and in every case a reasonable time under the circumstances from the date upon which limitation would commence to run against such claim or cause of action in behalf of such other party.

In the event any dispute of any kind should arise between the Towns concerning the construction of this Agreement or the breach thereof, then and in that event, such dispute may be submitted to an arbitrator selected by the American Arbitration Association. The proceedings before said arbitrator shall be governed by the rules and regulations of said Association, and the award and determination of said arbitrator shall be binding and conclusive upon the Towns and they herewith agree to abide thereby. Any costs associated with arbitration shall be split evenly between the Towns. The Towns may also mutually agree to use other forms of alternative dispute resolution, including mediation, to address disputes arising under this Agreement.

Both Towns reserve the right, either in law or equity, by suit, and complaint in the nature of specific performance, or other proceeding, to enforce or compel performance of any or all covenants herein.

8. TERMS

The parties hereto have read the terms of this Agreement before signing the same and hereby agree that no statement, remark, agreement, or understanding, oral or written, not contained herein, will be recognized or enforced.

9. SEVERABILITY

If any provision, section, phrase or word contained herein is determined by a court of competent jurisdiction to be unenforceable, for any reason, or beyond the scope of the statutory provisions of Chapter 40, § 4A of the General Laws, as amended, then it is the intention of the parties that the remaining provisions hereof shall continue in full force and effect.

10. ENTIRE AGREEMENT

The terms, together with all the attachments referenced herein, constitute the entire agreement between the Towns and shall supersede all previous communications, representations, or agreements, either oral or written, between the Towns with respect to the subject matter.

11. ANNUAL STATEMENT

Each Town shall keep accurate records of services performed, costs incurred and payments, reimbursements and contributions made and received, and shall provide same to the other Town upon request. An annual financial statement reflecting this information shall be issued by each Town to the other by November 1 of the following fiscal year.

12. MAXIMUM FINANCIAL LIABILITY

The maximum extent of each Town's financial liability in connection with this Agreement shall not exceed the amount validly appropriated by, or available to, each said Town for said purpose.

13. LIABILITY

Pursuant to MGL c. 40, s. 4A, each party shall be liable for the acts and omissions of its own employees and not for the employees of any other agency in the performance of this Agreement to the extent provided by the Massachusetts Tort Claims Act, M.G.L. c. 258. By entering into this Agreement, none of the parties has waived any governmental immunity or limitation of damages which may be extended to it by operation of law.

14. AMENDMENT

No officer, official, agent, or employee of either Town shall have the power to amend, modify or alter this Agreement or waive any of its provisions or to bind either Town by making any promise or representation not contained herein. Any modification shall be by a written amendment duly authorized by each Town. Said amendment shall be executed in the same manner as this Agreement is executed.

15. ASSIGNMENT

This Agreement shall not be assigned or transferred by either Town without the express written consent of the other Town given with the same formalities as are required for the execution of this Agreement.

16. GOVERNING LAW

This Agreement and all rights of the parties thereunder shall be governed by the laws of the Commonwealth of Massachusetts, without regard to its conflict of law provisions.

Witness the authorized signatures of the parties:

TOWN OF NORTHBRIDGE

APPROVED as to legal form:

Name: Thomas J. Melia
Chair, Board of Selectmen

Patrick J. Costello,
Town Counsel

James Marzec, Vice Chair

Certification of Available
Appropriation / Funds

James J. Athanas, Clerk

Town Accountant

Daniel J. Nolan, Member

Charles Ampagoomian, Jr., Member

TOWN OF UPTON

APPROVED as to legal form:

Name: Kenneth E. Picard
Chair, Board of Selectmen

Kopelman and Paige, Town Counsel

Robert J. Fleming, Member

Certification of Available
Appropriation / Funds

James A. Brochu, Member

Kenny Costa, Town Accountant